UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,673	08/19/2003	Suong-Hyu Hyon	1736-000001/REC	5763

27572 7590 05/22/2009

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

EXAMINER	
BERMAN, SUSAN W	

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
05/22/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Oath/Declaration

The Supplemental Declaration for this Reissue Patent Application is accepted. The Supplemental Declaration lists amendments filed in the prosecution of the instant application. The Supplemental Declaration states an error upon which reissue is based resulting from claiming less than patentee had a right to claim in the patent.

Specification

The amendment to the specification updates the continuing data.

Pre-Brief Conference Requested

Applicant requests a pre-appeal brief conference to review any outstanding rejections maintained after consideration of the Amendment after Final Rejection received 04-28-2009. A summary of the pre-appeal brief will be mailed separately.

Rejection under 35 USC 251

Claims 104, 109, 139, 149-153 and 164-168 were rejected under 35 USC 251 after entry of the amendment after final rejection filed 4-22-2009. Claims 110-111 were inadvertently omitted from the list of claims and should have been included because they incorporate the limitations of independent claim 104.

Applicant argues that broadening aspects of the claims are not related to subject matter given up during prosecution of the application 08/640738 which issued as Patent 6,168,626. Applicant argues that the instant claims were restricted from parent reissue application

10/141374 and are, thus, independent and distinct from the claims of application 08/640738 and Patent 6,168,626. This argument is not persuasive because the instant claims are drawn to the method prosecuted as claims 5-8 in 08/640738 and issued as claims 3-6 in Patent 6,168,626. Therefor, comments and amendments made during prosecution of the method claims 5-8 in 08/640738 are considered to be relevant to the prosecution of the instant claims.

Applicant further argues that the narrowing aspects of the current claims avoid recapture of broadened aspects surrendered during prosecution of 08/640738. The narrowing aspects specifically referred to are the recitation of a "compression deformable temperature between 50^0C below the melting point of said article and said melting point" employed in step b of claim 104 and "compression deformable temperature by heating at a temperature from its melting point minus 50^0C to its melting point" employed in step b 139 and specified temperature ranges recited in claims 111, 153 and 168. Applicant argues that if these amendments had been presented in the prosecution of the original claims the amendments would have further distinguished over the cited art. This argument is not persuasive because the cited prior art of record in the prosecution of 10/640738 taught compression deformable temperature ranges encompassing or the same as the ranges set forth in the instant claims. For instance, Zachariades et al (4,655,769) teach compression deformation of pseudo gels into thin films at temperatures between 100^0C to 170^0C that are then shaped into a tubular structure. Kitamaru et al teach heating at a compression deformable temperature. It is the examiner's position that limiting the compression deformation temperature range to temperatures below the melting point of the UHMWPE being treated would not have further distinguished the instantly claimed method from that taught in the prior art in the absence of a showing of unexpected results obtained therefrom. Furthermore, the narrowing

recitation is not considered to be directed to an amendment and/or an argument made to overcome a prior art rejection in the prosecution of 08/640738 and is an amendment completely unrelated to the rejections in the prosecution of 08/640738 and not related to the surrendered material in the prosecution of 08/640738. Thus there is recapture of surrendered material introduced by the broadening aspects of the instant claims. See the Final Rejection mailed 12-22-2008, pages 3-5, for a more detailed discussion.

Rejections over Zachariades et al in view of Kitamura et al

Applicant argues that there is no apparent reason to combine the teachings of the references as suggested in the final rejection unless the current specification is impermissibly used as a guide.

Applicant argues that Kitamaru et al teaches extending crosslinked UHNWPE after heating to a compression deformable temperature and thus teaches away from compressing the crosslinked UHMWPE. This argument is unpersuasive because Kitamaru et al teach stretching the crosslinked UHMWPE under pressure (see column 3, lines 25-28).

The references are considered to be analogous art because both teach methods for orienting UHMWPE comprising compression deformation. Zachariades et al teach compression deforming UHMWPE in the form of a gel. Kitamaru et al teach irradiating polyethylene to produce crosslinked polyethylene having a gel content of at least one percent. Thus the crosslinked gel disclosed by Kitamaru et al would be expected to provide a gel for use in the process taught by Zachariades et al since the process taught by Zachariades et al employs a gel. Kitamaru et al teach that irradiated crosslinked UHMWPE can be extended at a temperature of at

least the anisotropic melting point of the crosslinked polyethylene while under pressure. Thus, applicant's argument that Kitamaru et al teach away from compressing crosslinked UHMWPE is not persuasive.

Obviousness type Double Patenting Rejection

Applicant argues that since the current application is earlier filed and that the claims are allowable except for the obviousness-type double patenting rejection, a terminal disclaimer is not needed and the obviousness-type double patenting rejection should be withdrawn. This argument is not persuasive because it is not agreed, for the reasons set forth herein above, the instant claims are allowable. The obviousness-type double patenting rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Susan W. Berman/ whose telephone number is 571 272 1067. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571 272 1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SB
5/20/2009

/Susan W Berman/
Primary Examiner
Art Unit 1796